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Calendar No. 1881

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INTERNAL SECURITY AMENDMENTS

AUGUST 26 (legislative day, AUGUST 24), 1960.—Ordered to be printed

Mr. KEFAUVER, from the Committee on the Judiciary, submitted the following

MINORITY AND SEPARATE VIEWS

[To accompany S. 2652]

MINORITY VIEWS

THE PASSPORT SECTIONS

Our opposition to S. 2652 rests principally upon our firm belief that this bill represents a grave and unwarranted infringement of the American citizen's liberty to travel. Sections 4–13 of the bill lay down the criteria and procedures to be used by the State Department in denying, revoking, and limiting passports. We believe that the proposed criteria are vague and self-contradictory, and that the proposed procedures clearly violate the due process of law vouchsafed every citizen by the fifth amendment. Under cover of complicated legal language, S. 2652 would grant the State Department a discretion in the matter of withholding and limiting passports which is virtually absolute. We cannot approve of such a lack of faith in our historic belief in the rule of law, nor can we agree to legislation which attempts to remove important constitutional issues from the jurisdiction of the Federal courts. The Department of State's primary function is the conduct of foreign affairs, not the determination of the legal rights and responsibilities of American citizens, and it would be unfair to the Department, as well as unwise, to make it the final arbiter of the right to travel.

"The right to travel," said the Supreme Court in the recent case of *Kent* v. *Dulles* (357 U.S. 116 (1958))—

> is a part of the "liberty" of which the citizen cannot be deprived without due process of law under the fifth amendment * * * Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country,

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

> may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.

Today the power to grant or to withhold passports is the power to grant or to withhold the right to travel. This was not always so, for until 1914 it was possible to travel extensively without a passport. Although the Secretary of State from 1856 onward had the authority to "grant and issue passports" (11 Stat. 60), this discretionary power did not involve the right to travel, since passports were generally required neither by foreign governments nor by the United States. From the time of the First World War, however, to the present, Congress has enacted a series of compulsory passport laws to have effect during time of war or national emergency. The latest of these is section 1185(b) of the Immigration and Nationality Act of 1952 (66 Stat. 163 (1952); 8 U.S.C. 1101–1503), which provides that in time of war or national emergency—

> * * * it shall, except as otherwise provided by the President, and subject to such limitations and exceptions as the President may authorize and prescribe, be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid passport.

The compulsory passport is still in effect because the national emergency proclaimed by President Truman on January 17, 1953 (Proclamation No. 3004, Jan. 17, 1953; 18 Fed. Reg. 489), has not been terminated.

Although the citizen's right to travel has become dependent upon his obtaining a compulsory passport, the Department of State nevertheless insists that its old formal discretion over the granting and withholding of passports should apply in this new situation. The source of this discretion in statutory law is the present Passport Act (22 U.S.C. 211a–222, 44 Stat. 887–1926) which reads in part:

> The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and certified in foreign countries by diplomatic representatives of the United States * * * under such rules as the President shall designate and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify such passports" (sec. 211a).

Basing its claim partly upon this statute and the Presidential regulations made pursuant to it, and partly upon its constitutional function of conducting the Nation's foreign policy, the State Department has since 1950 claimed the power to deny passports to anyone whose travel would, in its opinion, be contrary to the national interest. Thus, State Department Regulation 51.135 denied passports to Communists, while regulation 51.136 purported to restrict the movement of others whose activities abroad would "be prejudicial to the interests of the United States." The opinion of the State Department, repeatedly stated, has been that the question of who may travel and who may not must be decided entirely by reference to U.S. foreign policy—in other words, by the State Department.

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

A series of decisions in the Federal courts have challenged this assumption of unlimited administrative discretion. In *Bauer* v. *Acheson* (106 F. Supp. 445 (D.D.C. 1952)) the court held that passport administration is not merely a matter of foreign affairs because it involves important constitutional rights:

> This court is not willing to subscribe to the view that the executive power includes any absolute discretion which may encroach on the individual's constitutional rights, or that the Congress has power to confer such absolute discretion. We hold that, like other curtailments of personal liberty for the public good, the regulation of passports must be administered, not arbitrarily or capriciously, but fairly, applying the law equally to all citizens without discrimination, and with due process adapted to the exigencies of the situation.

Less than 2 months after this decision, the State Department created a Board of Passport Appeals and provided rules of procedure for the Board (C.F.R. 22: 51.135–51.170) further court decisions made it clear that the courts would be satisfied with nothing less than genuine due process of law in the administration of passports. *Clark* v. *Dulles* (D.C.D. 1955, 129 F. Supp. 950) and *Nathan* v. *Dulles* (D.C.D. 1955, 129 F. Supp.) denied that private talks with applicants or informal interrogation constitute adequate hearings, while *Boudin* v. *Dulles* (D.C.D. 1955, 136 F. Supp. 218) decided that the Secretary may not deny a passport on the basis of evidence which does not appear upon the record and which the applicant has had no opportunity to meet. The cases of *Kent* v. *Dulles* (246 F. 2d 600 (D.C. Cir. 1957)), *Briehl* v. *Dulles* (248 F. 2d 561 (D.C. Cir. 1957)) and *Dayton* v. *Dulles* (237 F. 2d 43 (D.C. Cir. 1956)) decided that the Secretary does not have statutory authority to withhold passports from citizens on the ground of alleged political affiliations and specifically reserved opinion on the question of whether such statutory authority would be constitutional. However, the Supreme Court suggested that it would entertain grave doubts about the constitutionality of such a statute. The Court in the *Kent* case concluded:

> We deal here with a constitutional right of the citizen, a right which we must assume Congress will be faithful to respect. We would be faced with important constitutional questions were we to hold that Congress by section 1185 and section 211a had given the Secretary authority to withhold passports to citizens because of their beliefs or associations. Congress has made no such provision in explicit terms; and absent one, the Secretary may not employ that standard to restrict the citizens' right of free movement.

I. PASSPORT DENIAL

Sections 4 and 5 of S. 2652 grant the Secretary of State the right to deny, limit, or revoke passports in the case of any applicant—

> whenever there is reasonable ground to believe that the applicant or holder of a previously issued passport, is, or has been since January 1, 1951, a member of, or affiliated with, the Communist Party, or knowingly engages or has knowingly engaged, since January 1, 1951, in activities intended

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

> to further the international Communist movement, as to whom it is determined that his or her activities or presence abroad would under the findings made in section 5 of the Communist Control Act of 1954 be harmful to the security of the United States.

Does this mean that the Secretary of State may deny passports to applicants merely because they are Communists or people whose activities the Secretary thinks might further the Communist movement? On the surface it does not, because the same section states:

> The Secretary of State shall not deny a passport to any person solely on the basis of membership in an organization, association with any individual or group adherence to unpopular views, or criticisms of the United States or its domestic or foreign policies.

The committee report on this bill expresses the view that this section has substance and that passports will only be denied where, in addition to evidence of Communist associations —

> it is also determined that the activities or presence of such person abroad would be harmful to the security of the United States (S. Rept. 1811, 86th Cong., 2d sess., p. 5).

However, the bill does not justify this interpretation. The key words in section 4(c) and section 5(c) are:

> as to whom it is determined that his or her activities or presence abroad would under the findings made in section 5 of the Communist Control Act of 1954 be harmful to the security of the United States.

But, when we look at the fifth section of the Communist Control Act we find a series of 14 tests for determining membership or participation in the Communist Party or any other organization defined in the act. Thus, the two tests for the denial or revocation of a passport in this bill are membership in the Communist Party, and "activities intended to further the international Communist movement."

In other words, the bill does not make a denial of a citizen's passport application dependent upon the production of substantive evidence that he has acted contrary to national security. The vague criteria of membership in an organization and of personal beliefs pose a clear danger to the rights of American citizens to think and associate as they please. What, then, should the criteria be? One example of constructive thinking on this subject is the report of the Special Committee To Study Passport Procedures of the Association of the Bar of the City of New York, entitled "Freedom to Travel." It contains the following recommendation:

> Travel abroad by individual U.S. citizens may be restrained and passports may be denied to citizens as to whom the Secretary finds reasonable grounds to believe that their activities abroad would endanger the national security of the United States by (1) transmitting without proper authority, security information of the United States; (2) inciting hostilities or conflicts which might involve the United States; or (3) inciting attacks by force upon the United

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

States or attempts to overthrow its Government by force and violence.

Travel should not be restrained and passports should not be denied solely on the basis of membership in any organization, even the Communist Party, association with any individual or group, adherence to unpopular views, or criticism of the United States or its domestic or foreign policies. Thus, action hostile to the national security of the United States must be reasonably anticipated, as opposed to mere speech or the holding of opinions; and, there must be an evidentiary showing that travel of a particular individual will constitute a definable danger to the national security of the United States (p. XXII).

Sections 4(c) and 5(c) of S. 2652, however, are so worded that they do not protect the rights of law-abiding citizens. The end result of the vague wording and confusing cross-references of these sections is that the Secretary of State is empowered to deny, limit, or revoke the passport of non-Communists as well as Communists where "there is reasonable ground to believe" that they are dangerous. Since the Secretary alone may decide when reasonable ground for such belief exists, the Secretary may deny passports to anyone whom he considers suspicious. The ultimate effect of the bill is made clear by subsection (d) of section (4), which states the considerations which may be used as evidence that the applicant falls into the class defined in subsection (c). These considerations are membership in any group described in subsection (c), prior membership in such a group if the applicant continues to act as a member, activities which warrant the conclusion that the applicant is controlled by such a group, and activities which indicate that he adheres to the doctrine of such a group. Once again the bill refuses to lay down substantive criteria which define activities contrary to the national security, thus giving the State Department a free hand to decide what constitutes such a threat. This is exactly the kind of unfettered discretion which our system of government was created to limit and control.

II. DUE PROCESS OF LAW

Wide discretionary power may be granted to administrators only when the standards of due process of law are carefully maintained. It might be possible to allow the Secretary of State wide discretionary powers if the individual denied a passport were granted a hearing in which he was permitted the traditional rights of confrontation of witnesses, cross-examination, presentation with the complete evidence against him, appeal to an impartial body, and the review of his case by the courts of the land. However, all of these safeguards are denied to the applicant for a passport under the hearing procedures established by S. 2652. On the contrary, the bill authorizes the Department of State to withhold evidence, to keep witnesses hidden, and to refuse to let the applicant know the full nature of the charge against him, if it considers such action in the interests of national security. A ruling to this effect by the Secretary of State is final,

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

according to the bill, and hence is not subject to judicial review. Section 4, subsection (c) states:

> The Secretary may withhold a passport in the national interest on the basis of confidential information where he shall certify that it is contrary to the interests of this Nation that a passport be issued to the applicant.

The requirement of certification is significant, because it is a subtle method of avoiding judicial review. As long as the bill merely said that the Secretary could withhold information "where it is contrary to the interests of this Nation," the courts might have had jurisdiction to decide that a specific denial of a passport was not justified by the statute. But, according to this section, mere certification is to be taken as conclusive; the Secretary certifies, the case is closed. Moreover, it will be noted that this phrase enables the Secretary to deny passports for any reason whatsoever, whether or not that reason is relevant to the issue of subversion and the national security. If the Secretary decides that John Jones should not have a passport, he may deny the passport without stating his reasons for so doing, if such statement, in his opinion, ought not to be released.

Section 6 of the bill amends the Administrative Procedure Act (60 Stat. 237; 5 U.S.C. 1001) in order to provide for a process of review of passport decisions. Step by step, as we follow the subsections of this important section of the bill, we see the principles of due process being whittled away. "The applicant shall be given notice, *reasonable under all the circumstances*, of the reasons for the original action taken on his application * * *" (sec. 6(f)(1)). Why this addition of the words italicized? The reasons are not far to seek; just as the Secretary may deny a passport on the basis of confidential information, so he may decide that it is not "reasonable" to give the applicant full notice of the reasons for such denial. Paragraph (2) continues, "the applicant shall have the *privilege* of being advised, assisted, or represented (at no expense to the Government) by counsel." We are convinced, on the contrary, that representation by counsel is a right, not a privilege.

Reading further, we find (3): "the applicant shall have a reasonable opportunity to present all information relevant and material to the formulation of the special review officer's recommendation in his case." The special review officer is thus to decide what information is "relevant and material," to the formulation of his own recommendation. When we add the effect of this paragraph to that of paragraph (1), it becomes evident that the special review officer may first inform the applicant of only a small part of the genuine reasons for the denial of his application, and may then rule out any evidence which the applicant offers to refute the hidden reasons as immaterial to the stated charge. A hypothetical case in which these restrictions on the applicant's rights would operate to his great injustice is not difficult to imagine. Thus, John Jones is denied a passport because the State Department suspects that he intends to make a speech in West Berlin, attacking our West German allies. However, since this charge cannot be proved, and would not look good in print if it could, the Secretary's special review officer denies the passport on the basis of "confidential information." Jones testifies at his hearing that he is now a great friend of West Germany, but since the Department still

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

considers him a suspicious character, his testimony is declared immaterial by the special review officer, and Mr. Jones is left without a remedy.

It may be argued that State Department administration is honorable and conscientious and would not resort to such devious and objectionable devices to limit an American citizen's right to travel. But we should not write into law procedures which could so easily be abused by administrators, and which tempt the most well-meaning review officer to excesses of power.

Paragraphs (5) and (6) of this subsection give the applicant the right to testify in his own behalf, present witnesses, and offer evidence, as well as the right to inspect the transcript of his proceedings. These "rights," however, are seen for what they are—a weak excuse for due process of law, when we read subsection (g) of section 6.

> (g) Proceedings under this section shall be conducted in such manner as to protect from disclosure all information which, in the opinion of the Secretary of State or special review officer, would affect the national security, safety, and public interest, or would tend to compromise investigative sources or investigative methods: *Provided*, That no such information shall be the basis for the denial, withdrawal, cancellation, or revocation of a passport in the case of any applicant in proceedings under this section unless such applicant has been furnished a statement summarizing such information in as much detail as the Secretary or such special review officer determines is possible without jeopardizing the national security, safety, and public interest, or compromising investigative sources or methods.

Subsection (h) then provides that files used by the special review officer in arriving at his decision may not be inspected by the applicant. The purpose of these sections is clear. The Secretary of State is here given the unqualified right of withholding such evidence and suppressing such information as he considers in the national interest. There is no provision for judicial review of his decision, no way of checking up on whether he is abusing his power, or using it in the national interest, and in the interest of the rights of the applicant as well. In addition, not only the Secretary of State, who is ultimately responsible for all State Department decisions, but the special review officer, who might be almost any official in the Department, is given the power to keep evidence, witnesses, and the reasons for action against the applicant secret.

This bill would give legislative sanction to the practice of secret accusations made by men who have nothing to fear should their accusations prove false. It would deny one whose passport has been denied on grounds dangerous to his standing in the community the right to confront his accusers, to know the evidence against him, and to have a chance to refute it. The proviso to section 6(g), which purports to let the applicant know the grounds for the Secretary's decision in summary form, is of no effect whatsoever in protecting the aforementioned rights of passport applicants and passport holders, since once again the Secretary, on his own judgment, is permitted to withhold some or all of the evidence against the applicant. The District Court of the District of Columbia summed up our feelings on

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

this subject (*Boudin* v. *Dulles*, 136 F. Supp. 218 (D.D.C. 1955)) when it said:

> How can an applicant refute charges which arise from sources, or are based upon evidence, which is closed to him? What good does it do him to be apprised that a passport is denied him due to associations or activities disclosed or inferred from State Department files even if he is told of the associations and activities in a general way? * * * The right to a quasi-judicial hearing must mean more than the right to permit an applicant to testify and present evidence. It must include the right to know that the decision will be reached upon evidence of which he is aware and can refute directly.

The Court of Appeals (235 F. 2d 532 (D.C. Cir. 1956)) held in this case that if the Secretary should again refuse a passport to the plaintiff, he must state his grounds for withholding witnesses and evidence. The district court would then have jurisdiction to decide —

> whether the Secretary has given reasons valid in law for keeping confidential any information —not disclosed to the applicant—upon which he states he has relied.

In direct contrast to these decisions of the Federal courts, S. 2652 not only denies the applicant the right to know the evidence against him, but attempts to oust the jurisdiction of the courts, which the court of appeals in *Boudin* v. *Dulles* expressly provided for.

III. TRAVELERS REPORT

Section 7 is such an extreme interference in the liberty of American citizens that the State Department, as quoted in the report on the bill, rejected it. Section 7 provides that each applicant for a passport must declare under oath to provide upon request of the Department of State —

> a full and accurate report concerning the places outside the United States which were visited by such applicant subsequent to the issuance of any such passport and prior to its final expiration.

This section was taken from another proposed bill, S. 1303; the State Department had this to say about it:

> Section 6 of S. 1303 would require any passport applicant to promise under oath to report subsequently, upon request, on the places outside the United States visited during the period of validity of the passport. The provision appears to be of dubious utility, because the passport itself normally shows entry and exit stamps affixed by the authorities of foreign countries and, in cases where a passport holder succeeds in attempts to avoid the placing of such stamps on his passport, for his own reasons, he would presumably not furnish the information voluntarily and would incur no sanction if he refused (p. 11 of S. Rept. 1811, 86th Cong., 2d sess.).

Even after the State Department condemned this section as unnecessary and unworkable, it nevertheless remains in S. 2652. Section

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

7 is not only unworkable—it is an affront in its demand that American citizens hand in reports on their travels abroad.

IV. JURISDICTION

A further ground on which we may urge the rejection of this bill is the fundamental procedural ground of the primary jurisdiction over passport legislation of the Foreign Relations Committee. Senator Fulbright, chairman of the Senate Committee on Foreign Relations, made this point most strongly in a recent speech on the floor of the Senate (Congressional Record, July 1, 1960, vol. 106, No. 123, daily edition, p. 14416). [Copy attached.]

It is clear that the Foreign Relations Committee, and not the Judiciary Committee, has primary jurisdiction over passport legislation. We vigorously support the Senator in his belief that the Senate should not act on any bill concerning passports without first referring such bill to the Foreign Relations Committee for its consideration and recommendations. Only three short sections of S. 2652 deal with other matters. The five sections which make up the bulk of the bill concern passports, and should be referred to the Committee on Foreign Relations.

V. CONCLUSION

The passport provisions of S. 2652 do not give proper consideration to the American citizen's right to travel. The vague criteria for revocation or refusal of passports enable administrators to deny the right to travel on the basis of beliefs and associations. The review procedures which follow revocation or refusal do not protect the citizen's birthright: the guarantee that he shall not be deprived of his constitutional rights without due process of law. In each case, the Secretary of State is granted a discretion which is virtually absolute: in the case of the criteria, a discretion to determine what activities are not in the national interest; in the case of procedure, a discretion to suppress information which in his opinion ought to be suppressed. As the Wall Street Journal said in its editorial of July 6, 1960, on the passport provisions of S. 2652:

> It's probably old-fashioned of us, or even reactionary, but we have always clung to the idea that one of the liberties of a free people is the right to go from one place to another.
>
> * * * This bill not only gives the Government the authority to deny a passport; it rests that authority entirely in the hands of an appointed official, the Secretary of State, and says that he may exercise it on the basis of "confidential information" which he does not have to explain to anybody.
>
> So let's suppose the Secretary of State doesn't like somebody's political opinions—today a Communist's opinion, tomorrow yours perhaps. He denies a passport, and the matter is appealed to the courts. Under this proposed law he can refuse to say why he denied the passport; he merely explains to the court that explaining why he acted would "affect the national security, safety, and public interest," as he alone defines them. And there you are.

Nowhere, moreover, do we find substantial evidence of any instance in which the granting of a passport has had a significant detrimental

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

effect on the national security. We are fully aware that the issuance of a passport to a "suspicious person" might conceivably result in the misuse of that passport to the detriment of U.S. foreign policy, but in balancing that possibility against the wholesale deprivation of the right to travel which S. 2652 would allow, we conclude that even were there evidence of past abuses of the passport, we would not be justified in denying Americans the right to travel otherwise than by due process of law. Considering that no such evidence has been adduced, and, further, that most of the court cases on the subject have dealt with the denial of passports to dissenters, or at most suspected Communist sympathizers, we reject the assumption that the danger of permitting a general right to travel is so great as to warrant a vast restriction of liberty. S. 2652 is a vast restriction of liberty. Its true effects are hidden behind confusing and vague language, and involved references to other statutes. For these reasons we cannot concur in the majority report and strongly urge rejection of this bill.

S. 2652: OTHER SECTIONS

The purpose of section 1 of S. 2652, as summarized in the report of the Judiciary Committee (S. Rept. 1811, p. 2) is—

> to (1) permit the indictment and trial of an offender or joint offenders who commit abroad offenses against the United States, in the district where any of the offenders is arrested or first brought; (2) to prevent the statute of limitations from tolling in cases where an offender or any of the joint offenders remain beyond the bounds of the United States by permitting the filing of information or indictment in the last known residence of any of the offenders * * *

While we do not doubt that the Government of the United States has the power to legislate against offenses committed outside its territorial jurisdiction, we wish to point out that this power has been exercised with the greatest hesitation in the past. Because of the prima facie jurisdiction of all nations over citizens and aliens within their territorial limits, the habit of legislating to exercise authority over people abroad could lead to grave conflicts of jurisdiction between friendly nations. Had hearings been held on this legislation, had reports on its necessity been produced, had evidence on its behalf been submitted by the Department of Justice, we would be in a position to determine the need for such legislation. We find no such hearings, no specific evidence, no details from the Justice Department. We cannot support legislation which affects the acts of persons inside other countries without being shown specific evidence of its necessity and worth. Therefore, we ask for more information and study before we pass judgment on this section.

Section 2 expands the definition of "foreign principal" in the Foreign Agents Registration Act to include domestic organizations which are not only subsidized, but substantially "supervised, directed, controlled, or financed" by a foreign government or foreign political party. Subsection (2) of this section limits the commercial exemptions to the act by providing that a foreign principal, in order for its agents to be eligible for exemption from registering under the act, must be engaged in activities which are private, nonpolitical, and

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

financial or mercantile, instead of either private, nonpolitical, or financial-mercantile.

Mr. Rogers of Colorado, speaking of an identical bill in the House, summed up the practical purpose of this legislation:

> This bill is proposed to broaden and clarify present law. There is a question as to whether or not an individual working for an organization engaged in legitimate business financed or partly financed by a foreign country, should come under this act. This bill makes it certain that they do (Congressional Record, Aug. 29, 1959, vol. 105, No. 150, p. 15985).

The parties at whom this bill is aimed are thus not the spreaders of foreign propaganda, not conspirators seeking to overthrow the Government of the United States, but businessmen with connections abroad. We must, therefore, inquire further why the Justice Department is so concerned about businesses with foreign connections.

The answer to this inquiry may be found in the unpublished testimony of Mr. Nathan Lenvin, Chief of the Registration Section of the Internal Security Section of the Department of Justice, in hearings held before the House Committee on the Judiciary on August 13, 1959. Mr. Lenvin there revealed that the purpose of this legislation was to obtain information about certain domestic corporations which, while not "subsidized," or continually supported by foreign governments under the Foreign Agents Registration Act, were substantially controlled from abroad. He cited the Amtorg-Trading Corp. (New York) as an organization which, although not subsidized by the Soviet Union, was "staffed and directed and controlled by the Soviet Government." Thus, in order to obtain information about a few business corporations, we are presented with a bill whose wording is so sweeping that almost any businessman engaged in international trade could be required to file a detailed registration statement. Moreover, the words "supervised, directed, controlled, or financed" are capable of being interpreted to give the Department of Justice the power to demand information from a vast number of citizens whose dealings abroad are personal, rather than commercial. Mr. Lenvin admitted this in an exchange with Representative Libonati at the hearings before the House Judiciary Committee. Having expressed some doubts as to the undue scope of the language of H.R. 6817, the Representative was assured by Mr. Lenvin that the Justice Department would apply the statute wisely:

Libonati: "You would apply it practically, in other words; is that it?"

Lenvin: "Yes, we have to. This statute, unless applied practically, could lead you into all sorts of difficulty."

Libonati: "Yes."

Lenvin: "Any person who within the United States collects information and/or reports information to a foreign principal. Suppose you were a foreigner living here and were writing to your mother in England on the conditions here in this country, you would be an agent unless you took a commonsense approach to the thing."

Libonati: "Thank you very much."

The hearing closed quickly after this statement.

The representative of the Department of Justice, which asked for this legislation, has so well condemned it that we have little to add to

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

his observation that it could "lead you into all sorts of difficulty." We believe that any bill which puts the entire responsibility for protecting the rights of individuals in the hands of an administrative department is a bad bill. Like any other interference in the private affairs of individuals, the requirement of registration and the filing of reports with the Department of Justice must be limited to those cases in which it is shown to be necessary. We are not convinced that legislation which gives the Justice Department the power to demand a registration statement from a businessman or a lawyer representing, let us say, the British Overseas Airways Corp., is either desirable or necessary. Since no proof of danger to our internal security has been adduced in support of this section of the bill, we firmly oppose this unwarranted intrusion into the privacy of the American citizen.

CONCLUSION

Other sections of S. 2652 are thus marred by many of the same difficulties which have aroused our disapproval of the passport sections. They make important changes in delicate areas of the law without demonstrating that such changes are in any way necessary to the national security. We therefore urge the rejection of S. 2652.

THOMAS C. HENNINGS, Jr.
ESTES KEFAUVER.
PHILIP A. HART.
JOHN A. CARROLL.

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

ADDITIONAL VIEWS OF SENATOR CARROLL

In view of the thoughtful and compelling minority report filed herein—to most of which I heartily subscribe—I am opposed to the consideration of this bill during the closing days of this session for the important reason that grave and serious constitutional questions are raised in this type of legislation which require careful study and thorough debate.

In brief, this legislation should not be rushed through in the short time remaining to this session of the Congress.

JOHN A. CARROLL.

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

Approved For Release 2002/01/25 : CIA-RDP91-00965R000200030003-3

ADDITIONAL VIEWS OF SENATOR HART

S. 2652 does many things, and the full dissenting report signed by Senators Kefauver, Hennings, Carroll, and myself sets forth in detail the defects of the bill as it emerges from committee. I wish to add a comment only on the passport legislation provisions.

Men differ in their understanding of the essentials of liberty, but most agree with our judges that freedom includes the right to go from one place to another without the permission of the State, just as it includes the right to speak, the right to print, and the right to assemble peaceably. None of these rights is unqualified, to be sure, and from the beginnings of this Nation there have always been well-meaning men anxious to engraft qualifications on the rights guaranteed so simply and starkly in our Constitution.

Liberty is a fragile flower. It blossoms hardly anywhere in the world. We have it in the United States, but only because we have defended it with our lives in the past, and only because we nurture it in the present through extraordinary devotion. An expression of that devotion is to require those among us who would limit our liberties to carry—conclusively—the burden of showing that all liberty is imperiled if some one of the rights of freemen is not qualified.

In my judgment that burden has not been carried by the authors of S. 2652. The wording used is muddy and, for me, difficult to grasp, but the thrust of the bill is to deny passports to Communist Party members and to those who engage "in activities intended to further the international Communist movement," if the Secretary of State thinks the presence of such persons abroad would be harmful to the security of the United States.

The Secretary of State is relieved of any requirement, in the final analysis, of disclosing to the unsuccessful passport applicant the reason why he cannot leave the country.

Furthermore, the Secretary of State is by this bill given no, and required to observe no, particular standards in arriving at his conclusion that the passport applicant's presence abroad would be harmful to this country's security. There is a cross-reference to the Communist Control Act of 1954, but the standards contained in that act are for determining membership in the Communist Party, and by this bill such membership is not in itself sufficient to justify denial of a passport. What is sufficient, then? It's whatever the Secretary of State thinks is sufficient.

Granted that there are citizens who would use their right to travel abroad in a manner deadly to our national security, and that these we must contain within our shores where they can be observed, nevertheless the strictures to be applied should accord with due process of law.

As I understand S. 2652, within its sweep would be not only the deadly but the harmless, the hapless, the foolish, the eccentric, and the innocent—and as to none of these would we extend the full measure of due process. I doubt very much if this bill is constitutional, and I am sure it is not wise.

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